

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

AMANDA BURNHAM

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation: _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/05/12

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 3244 Keswick Rd. Baltimore, MD 21211

Address of Defendant: 507 Prudential Rd. Horsham PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations

7. ☐ Civil Rights

8. ☐ Habeas Corpus

9. ☐ Securities Act(s) Cases

10. ☐ Social Security Review Cases

11. ☒ All other Federal Question Cases
(Please specify)

15 U.S.C. § 1692

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel

counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 03/05/12

Attorney-at-Law

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

57100

Attorney I.D.#

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 03/05/12

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Amanda Burnham :

CIVIL ACTION

v. :

NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

<u>03/05/12</u>	<u>Craig Thor Kimmel</u>	<u>Amanda Burnham</u>
Date	Attorney-at-law	Attorney for
<u>215 540 8888</u>	<u>877-788-2864</u>	<u>kimmel@creditlaw.com</u>
Telephone	FAX Number	E-Mail Address

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 EASTERN DISTRICT OF PENNSYLVANIA

4 AMANDA BURNHAM,)

5 Plaintiff)

6 v.)

7 NCO FINANCIAL SYSTEMS, INC.,)

8 Defendant)

Case No.:

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

9
10 **COMPLAINT**

11 AMANDA BURNHAM ("Plaintiff"), by and through her attorneys, KIMMEL &
12 SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC.
13 ("Defendant"):
14

15 **INTRODUCTION**

16 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
17 U.S.C. §1692 *et seq.* ("FDCPA"), and the Telephone Consumer Protection Act, 47 U.S.C. §227
18 *et seq.* (hereinafter the "TCPA").

19 **JURISDICTION AND VENUE**

20 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
21 that such actions may be brought and heard before "any appropriate United States district court
22 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original
23 jurisdiction of all civil actions arising under the laws of the United States.

24 3. Defendant has its corporate headquarters in the Commonwealth of Pennsylvania
25 and as such, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

2 **PARTIES**

3 5. Plaintiff is a natural person residing in Baltimore, Maryland 21211.

4 6. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C.
5 §1692k(a) and Wenrich v. Cole, 2000 U.S. Dist LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

6 7. Defendant is a national debt collection company with its corporate headquarters
7 located at 507 Prudential Road, Horsham, PA 19044.

8 8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
9 and repeatedly contacted Plaintiff in an attempt to collect a debt.

10 9. Defendant acted through its agents, employees, officers, members, directors,
11 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

12 **FACTUAL ALLEGATIONS**

13 10. At all pertinent times hereto, Defendant was hired to collect a consumer debt of
14 another person and repeatedly contacted Plaintiff in its attempts to collect a debt of another
15 person.
16

17 11. Upon information and belief, the debt arose out of transactions that were
18 primarily for personal, family, or household purposes.

19 12. Plaintiff does not owe the debt that Defendant was attempting to collect.

20 13. Plaintiff did not consent to the placement of collection calls to her cellular
21 telephone by Defendant.
22

23 14. Further, Plaintiff never expressly consented to the placement of telephone calls to
24 her cellular telephone by the use of an automatic telephone dialing system or artificial voice
25 prior to Defendant’s placement of the calls.

1 15. Beginning in or around November 2011, and continuing through February 2012,
2 Defendant continuously and repeatedly contacted Plaintiff on her cellular telephone in its
3 attempts to collect a debt of another person.

4 16. Plaintiff regularly received collection calls from the following telephone
5 numbers: (800) 735-6588 and (800) 728-3346, which the undersigned has confirmed are
6 telephone numbers belonging to Defendant.

7 17. When contacting Plaintiff, Defendant used an automatic telephone dialing system
8 or a pre-recorded or artificial voice to place telephone calls to Plaintiff's cellular telephone.

9 18. None of Defendant's telephone calls placed to Plaintiff were for "emergency
10 purposes," as specified in 47 U.S.C. §227(b)(1)(A).

11 19. Defendant contacted Plaintiff, on average, two (2) times a day, sometimes calling
12 as frequently as four (4) times a day.

13 20. As a result, Plaintiff received more than ten (10) collection calls a week.

14 21. Desiring to stop the collection calls, in November 2011, Plaintiff contacted
15 Defendant and instructed them to stop calling her.

16 22. Defendant's representative advised Plaintiff that, "[NCO] did not have any record
17 of her owing a debt," and deceptively claimed that they would remove her name from its call
18 list.

19 23. Instead of removing her name from its call list, Defendant continued to contact
20 Plaintiff regarding the debt of another person.

21 24. Over the next three months, Plaintiff called Defendant on approximately seven
22 (7) separate occasions to inform Defendant it was calling the wrong person and to remove her
23 name from its call list.
24
25

1 25. For example, Plaintiff contacted Defendant on December 19, 2011 (twice);
2 December 31, 2011; January 11, 2012; January 12, 2012; January 16, 2012; and February 7,
3 2012, each time informing Defendant that she was not the person they were looking for, to stop
4 calling her and to remove her number from its call list.

5 26. However, each time Defendant ignored Plaintiff's instructions and continued to
6 contact her, calling her on: December 19, 2011; December 23, 2011; December 28, 2011;
7 December 29, 2011; December 31, 2011; January 3, 2012; January 5, 2012; January 10, 2012 ;
8 January 11, 2012; January 12, 2012; January 17, 2012; January 25, 2012; January 26, 2012;
9 February 2, 2012; February 6, 2012; February 7, 2012; and February 10, 2012.

10 27. Defendant failed to investigate or verify contact information prior to and after
11 calling Plaintiff.
12

13 28. Defendant failed to update its records to avoid further harassment of Plaintiff.

14 29. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of her
15 privacy, as it was inconvenient for Plaintiff to receive repetitive debt collection calls on her
16 cellular telephone for another person, especially after having informed Defendant that it was
17 calling the wrong person and that she did not want to receive its collection calls.
18

19
20 **COUNT I**
21 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

22 30. In its actions to collect a debt, Defendant violated the FDCPA in one or more of
23 the following ways:

24 a. Defendant violated the FDCPA generally;

25 b. Defendant violated §1692c(a)(1) of the FDCPA when it communicated with

1 Plaintiff at a time or place that it knew or should have known was
 2 inconvenient;

3 c. Defendant violated §1692d of the FDCPA when it harassed, oppressed or
 4 abused Plaintiff in connection with the collection of a debt;

5 d. Defendant violated §1692d(5) of the FDCPA when it caused Plaintiff's phone
 6 to ring repeatedly or continuously with the intent to annoy, abuse, or harass
 7 Plaintiff;

8 e. Defendant violated §1692e of the FDCPA when it used false, deceptive, or
 9 misleading representations or means in connection with the collection of a
 10 debt; and

11 f. Defendant violated §1692f of the FDCPA when it used unfair and
 12 unconscionable means in connection with the collection of a debt.
 13

14
 15 **COUNT II**
DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

16 31. Plaintiff hereby incorporates all facts and allegations specified in all preceding
 17 paragraphs by reference, as if fully set forth at length.

18 32. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a
 19 person or entity to bring in an appropriate court of that state "an action based on a violation of
 20 this subsection or the regulations prescribed under this subsection to enjoin such violation."
 21

22 33. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person
 23 or entity to bring in an appropriate court of that state "an action to recover for actual monetary
 24 loss from such a violation, or to receive \$500 in damages for each such violation, whichever is
 25 greater."

1 34. A non-debtor has a vastly greater privacy interest from debt collection telephone
2 calls to a cellular telephone than an individual who is a debtor. Watson v. NCO Group Inc., 462
3 F.Supp. 2d 641 (E.D. Pa. 2006).

4 35. Despite the fact that Plaintiff is a non-debtor who never consented to Defendant
5 making calls to his cellular phone, Defendant repeatedly placed non-emergency calls to
6 Plaintiff's cellular telephone without Plaintiff's consent.

7 36. Defendant's conduct violated § 227(b)(1)(A)(iii) of the TCPA by making any call
8 using any automatic telephone dialing system or an artificial prerecorded voice to a cellular
9 telephone for non-emergency purposes, without the prior express consent of the called party,
10 unless the call is initiated for emergency purposes.

11 37. The Act also authorizes the Court, in its discretion, to award up to three (3) times
12 the actual damages sustained for violations.

13 WHEREFORE, Plaintiff, AMANDA BURNHAM, respectfully prays for a judgment as
14 follows:
15

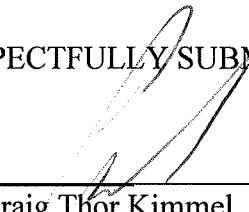
- 16 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
17 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
18 15 U.S.C. § 1692k(a)(2)(A);
19 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
20 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
21 d. Statutory damages of \$500.00 for each violation of the TCPA, pursuant to 47
22 U.S.C. § 227(c)(5)(B); and
23 e. Any other relief deemed appropriate by this Honorable Court.
24
25

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, AMANDA BURNHAM, demands a jury trial in
this case.

RESPECTFULLY SUBMITTED,

Date: 03/05/12

By: 
Craig Thor Kimmel
Attorney ID No. 57100
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30 E. Butler Pike
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